

**SYNOPSIS OF CRIMINAL OPINIONS IN THE COURT OF APPEALS OF THE STATE
OF MISSISSIPPI HANDED DOWN MAY 18, 2010**

Johnson v. State, No. 2009-KA-00711-COA (Miss.App. May 18, 2010)

CRIME: 2 Counts Sale of Cocaine

SENTENCE: 25 years on each count to run concurrently

COURT: Attala County Circuit Court

TRIAL JUDGE: Hon. Joseph H. Loper, Jr.

APPELLANT ATTORNEY: Hunter Aikens

APPELLEE ATTORNEY: Laura Tedder

DISTRICT ATTORNEY: Doug Evans

DISPOSITION: Affirmed. Roberts, J., for the Court: King, C.J., Lee and Myers, P.JJ., Irving, Griffis, Barnes, Ishee and Maxwell, JJ., Concur.

ISSUES: (1) Weight of the evidence, (2) Whether Instruction S-1 prejudiced Johnson as it referred to the two charges against Johnson as "Count II" and "Count III," and (3) whether the court erred in admitting several still photographs taken from a video of the drug sale.

FACTS: Donovan Eric Johnson was convicted of two counts of selling cocaine to a CI in Kosciusko. Laci Gove was arrested and charged with selling prescription drugs. To avoid prosecution, Gove agreed to act as a CI. On January 23, 2008, Gove met with officers and was given \$40. She was searched and a hidden camera was placed in her makeup bag. An officer followed Gove to Johnson's house. Gove went into Johnson's house and a few minutes later, Gove and Johnson walked outside to Gove's car. They talked for a few minutes before Gove drove away. An officer followed Gove back to the police department, where she gave him a small bag of cocaine. Gove then agreed to attempt a second buy. However, Gove had to leave the police department to pick up her pit bull from the vet. She was re-searched and Gove again went to Johnson's. Gove stayed in her car, because Johnson came outside. After a brief moment, Johnson went back inside his house. She was again followed back to the police department, and again handed over a second small bag of cocaine. Gove's video equipment malfunctioned during the second buy and the exchange was not recorded. Each of the small bags contained .4 gram of cocaine. Johnson's defense was that Gove falsely created the appearance that he sold her cocaine so she could avoid being prosecuted for selling prescription drugs. Johnson called Chauncy Dotson who testified that about 2½ weeks before Johnson's trial, Gove told him that Johnson had not sold her any drugs.

HELD: Johnson claimed Gove was not a credible witness, that she could have smuggled cocaine both times she encountered Johnson, that the video footage and photographic evidence of one of the two buys were unclear, and that the video and photographic evidence merely depicted a component of a prescribed breathing treatment rather than cocaine. Although Gove was not an accomplice, Johnson was given a cautionary instruction on informants. Gove explained that she was instructed not to talk about the buy, so that is the reason she told others she did not buy drugs from Johnson.

The verdicts were within the discretion of the jury.

==> An instruction referring to the charges of "Count II" and "Count III" did not prejudice Johnson. He argued the jury was led to believe he faced an additional charge. The jury never heard any reference to an actual additional charge. The jury could have reasonably inferred that if there had been an additional charge, that charge had been dismissed.

==> Gove testified that the first buy occurred sometime between 9:00 a.m. and 10:00 a.m. Officers testified that the first buy occurred at approximately 2:00 p.m. However, the pictures that were admitted displayed a time of 10:14 a.m. and 10:15 a.m. Gove testified the pictures accurately depicted what occurred. Johnson failed to challenge whether the photos were properly authenticated at trial. The issue is barred.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO63022.pdf>

Wilkins v. State, No. 2009-KA-00253-COA (Miss.App. May 18, 2010)

CRIME: Count I: Aggravated Assault, Count III: Murder, Count IV: Felon in possession of a firearm, and Count V: Shooting into an occupied dwelling

SENTENCE: Count I: 20 years, Count III: Life, Count IV: 5 years, Count V: 10 years. Counts I, III, and IV are to run consecutively, with Count V to run concurrently with the others.

COURT: Coahoma County Circuit Court

TRIAL JUDGE: Hon. Charles E. Webster

APPELLANT ATTORNEY: Hunter Aikens

APPELLEE ATTORNEY: Laura Tedder

DISTRICT ATTORNEY: Brenda Fay Mitchell

DISPOSITION: Affirmed. Barnes, J., for the Court: King, C.J., Lee and Myers, P.JJ., Irving, Griffis, Ishee, Roberts and Maxwell, JJ., Concur.

ISSUE: That the verdicts were against the overwhelming weight of the evidence.

FACTS: On the afternoon of November 27, 2007, a shooting occurred in Clarksdale, MS. Michael Martin had been shot in the leg but told police he did not know who did it. However, Martin's sister, testified that Martin called her to take him to the hospital and told her that DeMarco Wilkins a/k/a "Rambo" had shot him. Michael Moore testified that Wilkins got into an argument with Martin and Jerry Johnson a/k/a "Head" about a bag of low-grade marijuana that they had sold to Wilkins's brother earlier that morning. Wilkins called Martin out into the street to fight. Apparently a bystander handed Wilkins a gun, and Wilkins went behind a blue apartment. Martin and Johnson followed Wilkins around the corner of the blue apartment, and two shots were fired. Moore testified that while he did not see Wilkins shoot the gun, neither Martin nor Johnson had a gun. Sometime between 7:00 p.m. and 7:30 p.m. that evening, Ella Sherrod heard gunshots outside her house. She

sent her daughter to get the kids across the street. Someone then opened the door and rushed in and there were more gunshots. Sherrod did not see the shooter. Her daughter was burned badly on her neck. Another witness had seen Martin run into Sherrod's house while being shot at by Wilkins. Wilkins came out of the house and took off running. Martin was found lying on the floor, asking for help, and bleeding from his head, hand, and leg. Wilkins had his sister testify that he was with her when the first shooting occurred. He had Roy Washington testify Wilkins was with him during the second shooting. However, Washington admitted on cross that he had received a letter from Wilkins approximately a week before the trial with instructions for his testimony.

HELD: The verdicts were not against the weight of the evidence. Wilkins argued that no gun was recovered linking him to the crime, and he presented alibi testimony as to both shootings. Although some witnesses testified that Martin did not identify the shooter during the first incident, it was reasonable for the jury to believe that Martin would tell his sister who had shot him but not police. The jury obviously found Moore's and Martin's sister's testimonies more credible and reasonable than Wilkins's sister.

==>A witness testified that he saw Wilkins shoot Martin and fire into Sherrod's house using a nine-millimeter gun. An officer also testified that this witness identified Wilkins as the shooter on the night of the incident. Police identified the spent hulls found in Sherrod's front yard and the inside of her house as nine-millimeter shells. The evidence, when viewed in the light most favorable to the verdict, supports Wilkins's conviction for the murder of Martin and the discharge of a weapon into a dwelling house. The jury obviously did not believe Washington's alibi testimony.

==> Finally, eyewitnesses testified that Wilkins had a gun. The evidence is undisputed that Wilkins was a prior convicted felon at the time. Wilkins's guilty verdicts are not so contrary to the evidence as to constitute an unconscionable injustice.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO63151.pdf>

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